(39)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 469/2004

APPELLANT Badhu Ram

VERSUS

RESPONDENT The State of Chhattisgarh

Judgment post for 30-10-2007

Sd/-
Dhirendra Mishra
Judge

(40)

HIGH COURT OF CHHATTISGARH AT BILASPUR
Criminal Appeal No. 469/2004

APPELLANT Badhu Ram, Son of Padonaram Mancha, aged about 30 years, Occupation- Agriculturist, R/o. village Salap Padar, Police Station Matle, Distt. Malkangiri (Orissa)

VERSUS

RESPONDENT The State of Chhattisgarh, through Police Station Narharpur, Distt. Jagdalpur (C.G.)

Shri Sunil Sahu, Counsel for the appellant.
Shri Neeraj Mehta, Panel Lawyer, for the State/ respondent.

J U D G M E N T

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 12th November, 2003 passed in Special Case No. 26/2003 whereby the Special Court under NDPS Act, Bastar at Jagdalpur has convicted the appellant under Section 20 (b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short hereinafter referred to as the Act) and sentenced him to undergo R.I. for 10 years, to pay a fine of Rs. 1,00,000/- and in default of payment of fine, to further undergo R.I. for 1 year and 6 months.

2. Case of the prosecution, in brief, is that Sub Inspector Pramila Mandavi had proceeded for making recovery of cannabis from some one Prashant Arora and in that connection, she had gone to village Dumarpani and while she was returning after effecting seizure of cannabis from accused Prashant Arora, she received information that another person is carrying cannabis near the river for the purpose of sale whereupon she recorded the information vide Ex. P-1 and proceeded for the place with staff, where accused Budhu Ram was present. On interrogation, he told his name and stated that he is resident of Orissa and further stated that he is carrying cannabis in the bag. After apprising the accused of his legal right that he may get himself searched by a gazetted officer or any Magistrate and after obtaining his consent to be searched by Pramila Mandavi and after giving their personal search, 4 plastic bags lying near the accused were searched and cannabis like substance was recovered,

whereupon recovery memo of Ex. P-5 was prepared. After preparing the search memo of Ex. P-4, articles were got examined and the same were found to be cannabis. Thereafter identification memo of Ex. P-6 was prepared. All the bags were mixed to prepare homogeneous mixture and on weighment it was found to be 42 kilogram and 500 kg vide weighment memo of Ex. P-9. Two samples of 100 gm each were drawn from the two bags and the samples and the bags were sealed by specimen seal of Ex. P-10. After registering Dehati Nalishi on the spot, the seized contraband along with the accused were taken to Narharpur police station where Crime No. 92/2003 was registered vide Ex. P-18. The contraband was stored in Malkhana for safe custody. The information about the arrest, seizure and registration of offence was forwarded to the Superintendent of Police, Kanker and the Inspector General, Jagdalpur and the samples were sent for chemical analysis through the Superintendent of Police, Raipur. Thereafter charge sheet was filed.

3. During investigation, the prosecution examined 4 witnesses in all and thereafter statement of the accused was recorded in which the he denied the allegations present in the prosecution case and pleaded innocence and false implication. However, the learned Special Court has convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant submitted that there is no evidence available on record that the appellant was in conscious possession of the contraband. The conviction is based on the statement of the Investigating Officer Pramila Mandavi (P.W. 4), however her version does not inspire confidence. She has stated in her deposition that while she was waiting for vehicle along with staff and witnesses after making recovery of cannabis from the one Prashant Arora in connection with another offence, she received secret information about the present offence which was recorded as Ex. P-1 whereas from bare perusal of the document of Ex. P-1, it would be evident that the same is recorded at the Police Station Narharpur. There is non-compliance of Section 42 of the Act as the contraband weighing 1 quintal 58 kilograms and 400 grams was, in fact, seized from the bushes and the Investigating Officer has shown

the recovery of the above seized contraband from three different accused persons by apportioning the same and the recovery memo of Ex. P-5 does not mention the place from where the contraband was seized. All the documents were prepared in the police station. There is discrepancy with respect to the seal affixed over the samples. While the seal panchnama of Ex. P-10 mentions that it was in English letters of M or W, the F.S.L. report mentions that it was sealed by "Depart Narharpur Kanker". It was further argued that Head Constable Shiv Prasad Sonwani (P.W. 1) has not stated that he received the contraband and samples in sealed condition nor the relevant copy of the Malkhana Register mentions this fact and there is complete non-compliance of Section 55 of the Act. Referring to the judgment in the matter of Subhash –v- State of Chhattisgarh passed in Criminal Appeal No. 602/d2004 by this Court, it was argued that accused Subhash was also tried on the basis of recovery of 50 kilogram and 200 grams of cannabis from him on the same day and time. The trial of all the three cases were conducted together and witnesses are common and their depositions were recorded together and this Court considering the above discrepancies has acquitted the accused Subhash of all the charges vide judgment dated 27-6-2006.

5. On the other hand, learned counsel for the Sate has supported the impugned judgment.

6. After close scrutiny of the evidence available on record, this Court is of the opinion that there is force in the argument advanced by the learned counsel for the appellant. The independent witnesses have categorically stated that they suspected the movements of the accused persons whereupon they caught the accused and brought those persons in the village and informed about them to the police. Thereafter police came to their village and found that the accused persons had concealed 15 bags under the bushes containing 1 quintal and 58 kilogram of cannabis. The Investigating Officer in her deposition has not stated the place from where the cannabis was seized from the accused nor the same is mentioned in the recovery memo of Ex. P-5. There is a discrepancy regarding sealing, though the same may not be fatal in itself for the prosecution case however,

taking into consideration the overall discrepancy with respect to the seizure of the contraband in the statement of the Investigating Officer and the independent witnesses, lack of evidence regarding storage of the contraband and the sample in the Malkhana after sealing it properly, non-examination of the Constable who took the sample to FSL for examination, the version of the Investigating Officer does not inspire confidence and further considering that Subhash, against whom also identical evidence is there has already been acquitted by this Court, I am of the considered opinion that the instant appeal preferred by the appellant deserves to be allowed.

7. In the result, the appeal of the appellant is allowed. Conviction of the appellant under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the sentence imposed upon him under that section are set aside. The appellant is acquitted of all the charge. He be set at liberty forthwith if not required in any other case.

Sd/-
Dhirendra Mishra
Judge